IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No 9083 of 2003
For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

==========

1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NARSINH KANSINH CHAUHAN

Versus

MANAGING DIRECTOR - GUJARAT STATE CIVIL SUPPLIES CORP.LTD.

Appearance:
MR MA PAREKH for the Petitioner.
MR KM PATEL for Respondent No. 1,2,4 and 5.
Mr.K.P. Raval, Assistant GOVERNMENT PLEADER,
for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 17/09/2003

ORAL JUDGEMENT

Rule. Mr.K.M. Patel, learned Advocate, appears and waives service of rule on behalf of respondents 1, 2, 4 and 5 and Mr.K.P. Raval, learned AGP, waives service of rule on behalf of respondent No.3. With the consent of the parties, the matter is taken up for final hearing today.

By filing this petition, it is prayed that the

respondent-authority should regularise the services of the petitioner on the post of Mechanic-cum-Delivery Boy as a regular employee and his pay scale be accordingly fixed.

On behalf of respondents 1, 2, 4 and 5, Mr.K.M. Patel pointed out that the petitioner was actually appointed in March, 1983, for which he has relied upon the appointment order at page 12. From the same, it is clear that the petitioner was appointed with effect from 14.3.1983 as Mechanic-cum-delivery boy on ad hoc basis at Palanpur on the fixed pay of Rs.400/- and accordingly, as such, now, it is not in dispute that the petitioner was serving since March, 1983 as Mechanic-cum-Delivery Boy.

At the time of hearing, learned Advocate for the petitioner has relied upon the order passed by this Court in Special Civil Application No.3433 of 1992 as well as the order passed by this Court in Special Civil Application No.6388 of 1998, copies of which are produced along with the compilation, and order dated 28.4.2003 passed in Special Civil Application No.879 of 2003, wherein this Court has given certain directions for regularising the services of the petitioners of those petitions. Relying upon the said orders, it is prayed that, similar directions are required to be issued in this petition.

I have heard the learned Advocates of both the sides and I have also gone through the orders of this Court passed in Special Civil Applicaiton Nos. 3433 of 1992, 6388 of 1998 and 879 of 2003.

It is not in dispute that the present petitioner is serving on ad hoc basis since about two decades and, unfortunately, since long, he is continued on the fixed pay. The petitioner has approached the Authority from time to time to absorb him as regular employee and to give him regular pay scale. In my view, since the petitioner is serving since considerable time, it would not be just and proper to continue his services on ad hoc basis for such a long time and that too, on a fixed pay. Considering the facts and circumstances of the case as well as considering the observations of this Court against the very respondent in Special Civil Application No.3433 of 1992 and Special Civil Application No.6388 of 1998, respondent No.1 is directed to consider the case of the petitioner for absorption / regularization on the post in question and appropriate decision in this connection may be taken as early as possible, preferably within a period of one month from the date of receipt of

the writ of this Court.

The learned Advocate for the petitioner has fairly submitted that the petitioner will have no objection if he is accommodated at any place, where the vacancy is avialable, and for that purpose, even if he is transferred, he will not object to the same. Under the circumstances, the Corporation may also consider whether the petitioner can be accommodated on regular basis at any place wherever there is a vacancy on which he can be absorbed. It is clarified that, in case the petitioner is given regular appointment, he will be entitled to the benefit of regular pay scale only from the date of passing of such order and his past services may not be counted for the payment of increments, leave as well as seniority. In case such order is passed, by which regular appointment is given to the petitioner, such order will have no retrospective effect.

Considering the facts and circumstances of the case, the respondent-Corporation is directed to take appropriate decision in accordance with law in this behalf and the Corporation may decide whether any regular appointment can be given to the petitioner by giving him appointment in the regular pay scale. While taking such decision, observations made by this Court in the earlier petitions, viz., Special Civil Application Nos. 3433 of 1992 and 6388 of 1998, may also be taken into consideration.

In view of what is stated above, this petition is partly allowed. Rule is made absolute to the aforesaid extent, with no order as to costs.

It is clarified that this order is passed considering the facts and circumstances of the case and considering the fact that the petitioner is serving on ad hoc basis since about 20 years. This judgment may not, therefore, be treated as a precedent in other cases where such matters are required to be decided on their own facts.

17th September, 2003 (P.B. Majmudar, J.)

***

(apj)